

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CV 16-566 WJ/WPL
CR 97-731 WJ

RODNEY MILLER,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND
RECOMMENDED DISPOSITION**

This matter is before me on the Magistrate Judge's Proposed Findings and Recommended Disposition ("PFRD") (Doc. 6) and Defendant Miller's objections thereto (Doc. 7). The PFRD recommended that the Court deny Miller's Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255 and *Johnson v. United States*, 576 U.S. ---, 135 S. Ct. 2551 (2015), (Doc. 1), based on a conclusion that any finding of unconstitutional vagueness as to the residual clause of U.S.S.G. § 4B1.2 will not be retroactively applicable to cases on collateral review. The PFRD further recommends that the Court grant Miller a certificate of appealability under 28 U.S.C. § 2253(c) and encourage Miller to appeal the denial of his motion or file a motion for reconsideration if the Supreme Court, in *Beckles v. United States* (S. Ct. No. 15-8544), holds that *Johnson* is retroactively applicable in Guidelines cases.

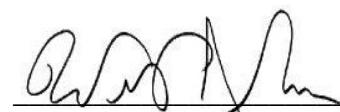
Miller followed the PFRD's advice and timely filed objections thereto. In his objections, Miller objects to the PFRD's recommendation that the Court deny his motion, that the Court find *Johnson* retroactively inapplicable to cases on collateral review, and that the Court find the

applicability of *Johnson* to the Guidelines to be a procedural decision. Miller does not reargue his position or provide additional information to challenge the PFRD.

Being fully advised in these matters, the Court overrules Miller's objections and adopts the PFRD. In addition to the thorough exposition laid out in the PFRD, the Court notes that Miller was convicted and sentenced in 1998, before *United States v. Booker*, 543 U.S. 220 (2005). Before *Booker*, the Sentencing Guidelines were mandatory. As the PFRD recommended, the Court encourages Miller to appeal this decision and/or to file the appropriate motions if the Supreme Court, in *Beckles*, decides that *Johnson* is retroactively applicable in guidelines cases.

IT IS THEREFORE ORDERED that:

- 1) the Magistrate Judge's Proposed Findings and Recommended Disposition (Doc. 6) are adopted by the Court;
- 2) the Defendant's § 2255 Petition (Doc. 1) is DENIED; and
- 3) this cause is dismissed with prejudice; and
- 4) a certificate of appealability is GRANTED.



UNITED STATES DISTRICT JUDGE